HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.6414 OF 2007

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Between:

A. Venkateshwarlu and another

.....Petitioners

AND

The Commissioner,
Municipal Corporation of Hyderabad
and two others

.....Respondents

::ORDER::

Counsel for the Petitioenrs : Sri M. Rajamalla Reddy

Counsel for Respondent Nos.1&2 : Sri Kodanda Rama Rao for
Smt.Kalpana Ekbote

Dated 26-7-2007

Per Sri G.S.Singhvi, CJ

Whether the functionaries of the Municipal Corporation of Hyderabad (now Greater Hyderabad Municipal Corporation) (for short, 'the Corporation') can invoke the provisions of Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') for removing the encroachment allegedly made by the petitioners A. Venkateshwarlu and Smt.A. Shobha over the property of their neighbour i.e. respondent No.3 – Smt.Manjula Odapalli is the only question which arises for determination in this petition filed under Article 226 of the Constitution of India for quashing notice dated 21.3.2007 issued by the Commissioner of the Corporation under Section 452 of the Act.

The petitioners are owners of 300 sq. yds. of land, which forms part of plot bearing No.2-2-18/30 situated at Durgabai Deshmukh Colony, Hyderabad. They purchased the land from its owners sometime in 2000. They obtained permission bearing No.18/2/2/2004, dated 19.6.2004 and permit No.77/12 for construction of the house and completed the construction in May, 2005. The following are said to be the boundaries of their house:

East: Neighbour's land
West: 12 feet passage of Smt.Manjula Odapalli
North: 30 feet wide Road
South: House of Manjula Odapalli

Respondent No.3 also purchased a portion of plot bearing No.2-2-18/30 as described hereinabove. On 5.12.2005, respondent No.3 got a legal notice served on the petitioners through their advocate for removing the compound wall on the premise that the same was constructed by encroaching 3 feet of her land on the western side. The petitioners sent reply dated 13.12.2005 through their advocate and denied the allegation of encroachment. They claimed that the compound wall was constructed in August 2004 in the presence of the husband of respondent No.3 – Shri P.R. Rao.

After about one year and three months, respondent No.3 appears to have lodged a complaint with the authorities of the Corporation about encroachment of her land and unauthorised construction of compound wall by the petitioners. Thereupon, the Commissioner issued the notice dated 15.3.2007 to petitioner No.1 and called upon him to produce sanctioned plan along with the registration and link documents for verification. Petitioner No.1 furnished xerox copies of the documents along with his letter dated 16.3.2007 addressed to the Assistant City Planner, Circle No.III, Town Planning Section, Municipal Corporation of Hyderabad, Hyderabad with a copy to the Commissioner. At the same time, he questioned the jurisdiction of the Corporation to take cognizance of the complaint made by respondent No.3. However, without taking note of his objection, the Commissioner issued notice dated 21.3.2007 for removal of the alleged encroachment made by the petitioners on the property of the neighbour on western side and unauthorisedly constructed compound wall.

The petitioners have questioned the impugned notice by asserting that they have constructed the house in accordance with the sanctioned plan; that they have not made any illegal construction; that they have not encroached on the neighbour's land and that the remedy, if any available to respondent No.3 in the matter of the alleged encroachment over her property is to approach the civil court.

In the counter filed on behalf of respondent Nos.1 and 2, Shri L. Bikshapathi, Assistant City Planner has averred that show cause notice was issued to the petitioners on the complaint made by respondent No.3 with an allegation that they have constructed compound wall on eastern and western sides by encroaching her land.

In her affidavit, respondent No.3 has averred that she purchased 605 sq. yds. of the plot bearing No.2-2-18/20/1 situated at Durbabai Deshmukh Colony, Hyderabad from its owners Smt.Safia Mumtaz and Mohd. Abdul Manan way back in the year 1981; that the petitioners purchased the remaining property from the owners by two separate sale-deeds executed in 2000; that during her absence, in April, 2005, the petitioners demolished the compound wall, which was in existence for more than 40 years and constructed a new compound wall by encroaching 3 feet of her passage on the western side.

We have heard learned counsel for the parties and scrutinised the records. Since it is neither the pleaded case of the respondents nor any document has been placed before the Court to show that the petitioners have encroached municipal land or any other public land or constructed the building in violation of the sanctioned plan, notice dated 21.3.2007 issued by the Commissioner of the Corporation is liable to be annulled by being declared as without jurisdiction. The Act does not clothe the Commissioner with the power to issue demolition notice in respect of private property. The dispute between the petitioners and respondent No.3 relates to the alleged encroachment made by the former over the latter's property. Such dispute, does not, by any stretch of imagination, fall in public law domain. Therefore, the Commissioner did not have the jurisdiction, power or authority to issue notice to the petitioners under Section 452 of the Act for removal of the alleged unauthorised encroachment made by the petitioners.

For the reason stated above, the writ petition is allowed. The notice impugned in the writ petition is quashed. However, it is made clear that respondent No.3 shall be free to avail appropriate legal remedy in the matter of the alleged encroachment of her property by the petitioners.

As a sequel to allowing the writ petition, WPMP No.8201 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

July 26, 2007

C.V.NAGARJUNA REDDY, J

svs